

RECEIVED

MAY - 8 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE PROVISION OF INTERSTATE AND
INTERNATIONAL INTEREXCHANGE
TELECOMMUNICATIONS SERVICE VIA
THE "INTERNET" BY NON-TARIFFED,
UNCERTIFIED ENTITIES

AMERICA'S CARRIERS
TELECOMMUNICATION
ASSOCIATION

Petition for Declaratory Ruling, Special
Relief, and Institution of Rulemaking

RM No. 8775

DOCKET FILE COPY ORIGINAL

Joint Opposition of Computer Professionals for Social
Responsibility and The Benton Foundation

Robert Cannon
*Attorney for CPSR and the Benton
Foundation*
2358 N. Vernon Street
Arlington, VA 22205
703-527-6631

cannon@cais.com
<http://www.cais.net/cannon/>

This document available at
[http://www.cais.net/cannon/
acta/comment.htm](http://www.cais.net/cannon/acta/comment.htm)

Dated: May 8, 1996

No. of Copies rec'd
List ABOVE

024

CCB

Table of Contents

<u>Summary</u>	ii
<u>Introduction</u>	1
<u>Facts</u>	4
<u>Analysis</u>	8
I. ACTA's Justification for The Relief Requested is Merely An Alleged Loss of Business and is Unpersuasive	8
II. The Commission Lacks Jurisdiction Over Software Companies As Telecommunications Common Carriers	9
III. ACTA's Request for Declaratory Judgment Should Be Denied; The Issue of Jurisdiction Over The Internet Is Not Before the Commission.	11
IV. The Relief Requested Violates Federal Policy In Favor Of Promoting The Internet and Keeping The Internet "Unfettered" From Federal and State Regulation ...	11
A. The Nature of Computer Network Transmission Makes Distinction And Detection of Audio-Digital Signals Difficult If Not Impossible	12
B. Attempts To Regulate Internet Telephony Would Be Defeated By The Computer Network Itself	15
V. Granting the Relief Requested Would Set A Precedent Contrary to the Public Interest and Contrary to Federal Policy	17
VI. ACTA's Disingenuous Argument That There Is a Threat to the Viability to the Internet Is Incorrect	17
VII. ACTA Concern for Universal Service Is Unpersuasive	18
<u>Conclusion</u>	19

Summary

ACTA has petitioned the Commission for regulation of Internet telephony software and to declare its jurisdiction over the Internet. ACTA's petition amounts to nothing more than a complaint of loss of business.

ACTA fails to explain (or even acknowledge) how its petition complies with clearly stated Federal policy to keep the Internet "unfettered" from Federal and State regulation and to promote Internet technology. ACTA's petition is contrary to that policy.

ACTA also failed to substantiate its claim of harm. A loss of business is not a persuasive rational for relief requested. Even it were, ACTA has failed to substantiate its claim of loss of business or that Internet Telephony software is the cause.

ACTA is incorrect in its assertion that the Commission has jurisdiction over Internet telephony software. ACTA is also unpersuasive in its request for a declaratory judgment that the Commission has jurisdiction over the Internet; this issue is not before the Commission.

The relief requested by ACTA is technically infeasible and would only harm American software companies.

For these reasons, ACTA's petition should be denied.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE PROVISION OF INTERSTATE AND
INTERNATIONAL INTEREXCHANGE
TELECOMMUNICATIONS SERVICE VIA
THE "INTERNET" BY NON-TARIFFED,
UNCERTIFIED ENTITIES

RM No. 8775

AMERICA'S CARRIERS
TELECOMMUNICATION
ASSOCIATION

Petition for Declaratory Ruling, Special
Relief, and Institution of Rulemaking

Joint Opposition of Computer Professionals for
Social Responsibility and the Benton Foundation

I. Introduction

On March 5, 1996, ACTA filed a petition with the Federal Communications Commission in which it requested that the Commission: (1) issue a declaratory judgment declaring the Commission's jurisdiction over the Internet, (2) enter an order directing American software companies to stop providing telecommunications services as common carriers, and (3) begin a rulemaking concerning use of the Internet.¹ The essence of ACTA's petition is that the existence of competition from the new and emerging technologies of Internet telephony threaten the economic

¹ACTA Petition.

viability of ACTA members and should, therefore, be regulated.

CPSR is a public-interest alliance of computer scientists and others concerned about the impact of computer technology on society. CPSR works to influence decisions regarding the development and use of computers because those decisions have far-reaching consequences and reflect our basic values and priorities. As technical experts, CPSR members provide the public and policymakers with realistic assessments of the power, promise, and limitations of computer technology. As concerned citizens, CPSR directs public attention to critical choices concerning the applications of computing and how those choices affect society. (See CPSR's Mission Statement Attached).

The Benton Foundation believes that communications in the public interest, including the effort to connect all Americans to basic communications systems, is essential to a strong democracy. Benton's mission is to realize the social benefits made possible by the public interest use of communications. Benton bridges the worlds of philanthropy, community practice, and public policy. It develops and provides effective information and communication tools and strategies to equip and engage individuals and organizations in the emerging digital communications environment.

The Benton Foundation's Communications Policy Project is a nonpartisan initiative to strengthen public interest efforts in shaping the emerging National Information Infrastructure (NII). It is Benton's conviction that the vigorous participation of the nonprofit sector in policy debates, regulatory processes and demonstration projects will help realize the public interest potential of the NII. Current emphases of Benton's research include extending universal service in the digital age; the future of public service in the new media environment; the implications of new networking tools

for civic participation and public dialogue; the roles of states as laboratories for policy development; and the ways in which noncommercial applications and services are being developed through new telecommunications and information tools.

Both CPSR and the Benton Foundation have a strong interest in the promotion of the Internet as a part of the National Information Infrastructure (NII). CPSR and Benton are concerned with how Federal policy will affect the promotion of the Internet, Internet technology, and software used in Internet communications. Both organizations also have an extensive presence on the Internet² and rely on the Internet as a means of communication.

A. ACTA's Petition is Contrary to the Telecommunications Act of 1996

The year 1996 has been one of dramatic change in the telecommunications industry. It is the year in which the Telecommunications Act of 1996 was passed, changing the entire playing field of telecommunications, moving the industry as a whole towards deregulation and competition. As a part of that Act, Congress passed the controversial Communications Decency Act (CDA) (codified at 47 U.S.C. § 223 (1996)).³ At the heart of the debate over the CDA was the issue of whether the Federal government should regulate the Internet. After great consternation and a clear government statement of a "strong governmental interest,"⁴ Congress decided that legislation governing the

²See CPSR's Web Page at <http://www.cpsr.org/home/>; Benton Foundation's Web Page at <http://www.benton.org/>.

³Computer Professionals for Social Responsibility is a named party in *ACLU v. Reno* (E.D.Pa.), challenging the constitutionality of the CDA. The presentation of cases has been concluded in that challenge. A decision for the three-judge panel is expected after June 4, 1996.

⁴Congress stated that the strong government interest of the protection of minors was sufficient to pass legislation restricting the content of speech on the Internet. Even with such

Internet was necessary. However, in the same breath, Congress stated

(b) **Policy:** It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*

47 U.S.C. § 230 (1996) (emphasis added). Congress' intent is clear; unless extraordinary circumstances are found, Federal and state governments shall decline regulation of the Internet; the Internet and the technology behind the Internet shall be left free to emerge and develop. Congress concluded that any unnecessary involvement by the government in this medium would be detrimental to this national and global asset.

ACTA, in the age of deregulation, demands more regulation. Yet ACTA disingenuously fails to point out Congress' clear direction on this subject, and completely, fails to explain how it's demands could possibly comport with Federal policy as stated in 47 U.S.C. § 230. ACTA's petition is a cynical complaint by an industry which fears the loss of business. It is the dinosaur complaining about the emergence of the mammals. The FCC should not entertain or grant the demands presented

strong government interest, Congressional resistance to regulation of the Internet was fierce. The Cox/Wyden Amendment, which would have prohibited FCC jurisdiction over the Internet, was passed virtually unanimously by the House of Representatives (there were only four votes in opposition). While a compromise was reached on the issue of regulating the Internet, it was only agreed to after the inclusion of language adding 47 U.S.C. § 230 (*see infra*). Regulation was hesitantly permitted only on a narrow issue as a result of a strong government interest.

by this disingenuous petition.

II. Facts

The Internet is difficult to define. It is not a thing which can be pointed to. It is not a product. It is not a company. It is not owned or controlled by anyone anywhere. It is not the computers which use the Internet. It is not the high speed phone lines over which Internet traffic flow. It is not the users and it is not the Internet Service Providers (which are a collection of network "server" computers). The best description of the Internet is that it is a *protocol* by which a network of not necessarily compatible computers and technologies can communicate with each other. This protocol is decentralized, scalable, and expandable.⁵ The protocol permits the transmission of data through networks using packet technology. The data packets data are self-addressed and search out their destination. If obstruction is met, obstruction is routed around; problems can be resolved through alternative routes. It is this protocol which is the Internet and which distinguishes it from other media of communications.

One way of communicating on the Internet is the emerging technology of Internet telephony.⁶ Internet telephone software permits individuals who are online to communicate with one another

⁵The Internet was developed in the 1960s as a means for the military to communicate in the event of a nuclear war. In the event any part of the network was destroyed, the remaining computers would still be able to communicate with each other. Transmissions are sent out in packets which have been addressed. The packets are launched into the Internet and will bounce from computer to computer until it reaches its destination. The permits the packets to continue to search for their destination in the event of meeting an obstruction.

⁶See Declaration of Andrew Oram, *Technical Implementation and Limitations of Real-Time Audio on the Internet* (Attached).

using audio-digital transmissions. Users must have a sound card and Internet access. Individuals can then communicate with each other point-to-point; one individual can call the computer of the individual without the needs of accessing a designated computer server, telephone company, or telecommunications service other than having Internet access.

This technology, which ACTA characterizes as a threat to the entire NII,⁷ is to the contrary primitive and emerging. Internet telephony is currently facing many technical challenges.

Generally, there are no standards. In order for two users to communicate with each other, they must have the same software. Software from different companies generally are not compatible. Furthermore, individuals must be logged onto the Internet at the same time; an Internet phone will not "ring" unless the owner is online.

The transmission itself is unreliable. The Internet does not operate under a continuous stream of data; it operates using packet technology. These packets are launched into the Internet by one user and bounce from computer to computer until they find their destination. This creates a signal which may have gaps and delays. Others have described transmissions as inferior in quality to regular telephony.⁸

⁷ACTA Petition ("Such development will clearly be detrimental to the health of the nation's telecommunications industry and the maintenance of the nation's telecommunications infrastructure").

⁸See, e.g., How Web Phones Work, c|net <http://www.cnet.com/Reviews/Compare/Wphone/ss05.html> (accessed April 26, 1996) ("Although digitized sound can theoretically match or exceed the fidelity of an analog sound (think of CDs vs. LPs), it doesn't do so in Web phone applications because of limitations on the amount of data you can pump across the Internet. To achieve telephone-quality sound, you'd need to send approximately 8K of data per second, whereas the typical 28.8-kbps modem handles less than 3K (that's kilobytes) per

Another problem is that an individual desiring to make a call must know the address to which he is calling. Some programs require the individual to know the IP address of the person called.⁹ This creates a problem because not all Internet service providers provide fixed and permanent IP addresses to users; an individual will get a new IP address with each new Internet session. Thus an individual would not know the individual's own address necessary to be called. Software companies correct for this situation by providing Internet telephony dedicated computer servers. Users connect through this dedicated server; once connected, the server is no longer necessary and the transmission continues point-to-point. The dedicated server acts as no more than an online line phone book. In addition, other software packages use alternative address schemes to direct transmissions; some packages rely on e-mail addresses.

"Firewalls" create a further difficulty on the issue of addresses. Companies with computer networks who wish to protect those networks from the outside world will set up designated gateways between the company network and the Internet. At this gateway will be a technology known as a "firewall" that prohibits outsiders from accessing the company network. The result is that users on the company network lack direct access to their Internet address. Without this direct access, Internet telephony is not currently possible.¹⁰

second").

⁹An IP address is a several digit number assigned by an Internet Service Provider to a user which identifies that user. Data which is being transmitted to that user will be directed to the individual at the IP address.

¹⁰Another technical challenge for Internet telephony is the hardware of the individual's computer which the software utilizes. A sound card is necessary in order to produce audio at the individual's computer. Most sound cards are half duplex; they only permit an individual to speak

This is the technology which ACTA claims threatens the entire NII.¹¹ It is an emerging technology offering new opportunities for more efficient and cheaper communications. This is exactly the type of Internet technology which Congress states that it wants "unfettered" and "promoted." 47 U.S.C. § 230.

Analysis

I. ACTA's Justification for The Relief Requested is Merely An Alleged Loss of Business and is Unpersuasive

ACTA's request that the Commission prohibit American software companies from selling software and that the Commission declare jurisdiction over the Internet. ACTA's justification for the relief requested is unpersuasive. ACTA's "interest" in bring this petition is an alleged threat to the viability to its members.¹² In other words, ACTA's alleged harm is a loss of business. ACTA cites no authority for the proposition that a loss of business is sufficient rationale for the Commission to grant the relief requested. It is not. Since a loss of business in and of itself is not a persuasive rational to justify the relief requested, ACTA's petition ought to be dismissed.

Assuming that a loss of business is a sufficient basis for the Commission to grant the relief requested, ACTA has failed to establish the alleged harmed. The alleged harm is entirely

or listen, not both. If both users speak at the same time, neither will hear the other. The technology is in the process of evolving and full duplex sound cards are being introduced on the market.

¹¹See footnote 7.

¹²ACTA Petition ("Continuing to allow such entities to operate without complying with or being subject to the same legal and regulatory requirements as ACTA carrier members threatens the continued viability of ACTA's members and their ability to serve the public and acquit their public interest obligations under federal and state laws.")

speculative. ACTA has provided the Commission with no evidence as to the number of telephone software programs sold. ACTA has provided no evidence as to how many programs are in use. ACTA has provided no evidence as to how many computer network telephone calls are being made. ACTA has provided no evidence as to how many people are making Internet phone calls in lieu of using the services of ACTA members. ACTA has provided nothing to substantiate its claim that computer network telephony has harmed its business or will harm its business. The harm is entirely speculative.

ACTA argues that it is in the public interest to protect the viability of ACTA members. ACTA fails to adequately justify this claim. In the new telecommunications era of deregulation and greater competition, many interexchange carriers are embracing the Internet. MCI and AT&T have both announced service packages that include long distance and Internet service. As a result of the Telecommunications Act of 1996, competition in both the media of both telephones and the Internet is flourishing and technology is advancing. Yet instead of moving forward, embracing emerging technologies and increasing competition, ACTA wants to hold the United States in the past. ACTA fails to explain how holding the NII back in order to protect companies instead of moving forward as AT&T and MCI have is in the public interest.

ACTA has failed to establish a harm to its members or to the public interest sufficient to justify the relief requested. As ACTA has failed to provide sufficient reason to justify the relief requested, ACTA's petition should be dismissed.

II. The Commission Lacks Jurisdiction Over Software Companies As Telecommunications Common Carriers

The 1996 Act makes clear that Internet telephony software programs are not telecommunications services or telecommunications common carriers. Under the Act, in order to be considered a telecommunications common carrier an entity must be providing telecommunications services.¹³ The term "telecommunications service" is defined as "the offering of telecommunications for a fee."¹⁴ Finally, "telecommunications," is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."¹⁵ Thus, in order to be a telecommunications carrier service, an entity must provide (1) a service, (2) offering transmissions, (3) for a fee.

Internet telephony software does not fit within the definition of a telecommunications service or common carrier. Internet telephony software is like a telephone; it is the end product which may be utilized in order to conduct communications, but it is not in and of itself a telecommunications service or common carrier. Like a telephone, telephone software does not offer transmissions; just like a telephone network is necessary to offer transmissions, a computer network is necessary to offer transmissions to an individual with telephone software. Finally, just like most telephones, telephone

¹³The term 'telecommunications carrier' means any provider of telecommunications services . . . A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services. 47 U.S.C. § 153(41).

¹⁴The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(46).

¹⁵47 U.S.C. §153(43).

software does not charge a fee for the transmission.

A telephone is necessary to make phone calls on a telephone common carrier. But no one would mistake a phone for the common carrier. Likewise, the Commission should not mistake telephone software for a common carrier. Since Internet telephony software is neither a common carrier nor a telecommunications service, ACTA's request to treat Internet telephony software like a common carrier or a telecommunications service should be denied. "To stretch an analogy, this is like arguing that, instead of regulating FedEx or Airborne Express like the postal service, we should instead regulate the manufacturer of mail bags." ¹⁶

III. ACTA's Request for Declaratory Judgment Should Be Denied; The Issue of Jurisdiction Over The Internet Is Not Before the Commission.

ACTA seeks declaratory judgment that the Commission has jurisdiction over the Internet. This issue is not before the Commission. Such a declaration will have no effect protecting the members of ACTA from the alleged harm. ACTA's complaint concerns a loss of business resulting from competition from Internet telephony software. Commission jurisdiction over software is not dependant upon jurisdiction over the Internet. Such a declaration will not resolve any of the rights of ACTA or of software companies. It will not avoid any impending litigation. It would be an improper advisory opinion detached from the facts or issues before the Commission. ACTA, so fearful of new and emerging competing technologies, has asked the Commission to make a legal declaration without reason. Since ACTA's request for declaratory judgment of jurisdiction over the

¹⁶David Loundy, Phone Companies Urge F.C.C. to Disconnect Competitors <http://www.leepfrog.com/E-Law/CDLB/ACTA.html> (accessed April 23, 1996) (reprint from *Chicago Daily Law Bulletin* 5 (April 11, 1996)).

Internet is not ripe, it should be dismissed.

IV. The Relief Requested Violates Federal Policy In Favor Of Promoting The Internet and Keeping The Internet "Unfettered" From Federal and State Regulation

Congress has stated a clear policy in favor of the promotion of the technology of the Internet unfettered by federal and state regulation. 47 U.S.C. § 230(e) (1996). ACTA's petition violates this policy. The relief requested is impractical,¹⁷ would create an entangled regulatory scheme which is not in the public interest, would be highly detrimental to the promotion of new, emerging Internet technologies, and would only harm America Companies.

A. The Nature of Computer Network Transmission Makes Distinction And Detection of Audio-Digital Signals Difficult If Not Impossible

1. Distinction Between and Detection of Audio and Other signals Would Be Impossible

The relief that ACTA requests would entangle computer networks with regulation because of the difficulty if not impossibility of distinguishing a digital audio signal from any other digital signal. As demonstrated in the Declaration of Andrew Oram of CPSR (Attachment A):

Increasingly, digital electronic networks are being used to carry images, audio signals, and video signals. Once they are sampled and represented in numerical form, audio and video become just another form of digital data and can thus be carried over a digital network like any other traffic.

...

One of the most exciting trends in Internet technology is the combination of text, audio, and video in real-time collaborative work. Here, all data is transmitted as a single stream and then divided into constituent channels at the receiving end. There is no technical basis for distinguishing between audio and other media. In all the digital networking technologies currently envisioned for the near future (such as Asynchronous Transfer Mode)

¹⁷See Declaration of Andrew Oram, *Implications of Singling Out Real-Time Audio for Regulation and Inapplicability of the Telephone Model* (Attached).

transmissions are still divided into packets, and many kinds of data can be combined and intermingled.

Digital is digital. It is a signal composed of zeros and ones transmitted from one point to another. This signal is received by an end user with the appropriate technology and transformed into the appropriate result. But in transmission there is no distinction between the ones and zeros of one transmission and the ones and zeros of another. An attempt by the Commission to regulate and detect Internet telephony transmissions would be difficult if not impossible. ACTA has neither made a representation that such distinction is possible nor, if possible, how they believe it can be achieved. Therefore, the relief requested would lead to an entanglement of the Internet in violation of section 230.

2. Distinction Between Audio Telephony and Other Audio Would Be Impossible

Even if one were able to develop a technology that filtered every one of the uncountable transmissions of computer networks and could distinguish audio signals from other digital signals, distinction and detection of one audio signal would be difficult if not impossible. Audio transmissions take many forms.

A large number of organizations are working hard to make the Internet more than a text-only medium. Many people see the availability of graphics, audio, and video as key to the broadening of digital networks as valuable media for education and other social goals. Voice transmission has been used for such experiments as Internet Talk Radio (in which files of audio data can be downloaded and played off-line) and more recent experiments in real-time radio transmission. CU-Seeme has been available for several years to provide audio and video links between individuals on the Internet. While the ACTA petition considers Internet telephone a "new technology," we recognize it as a convergence of many existing techniques that grow naturally from Internet applications and audio sampling.

Declaration of Andrew Oram (Attachment A). Audio may come from Internet radio, from Internet

telephony, from multi-media web displays, from audio files at FTP sites, or a number of other emerging technologies. The distinction of Internet telephony audio-transmissions from other audio transmissions would be difficult if not impossible. ACTA has neither explained that such a distinction is possible nor, if possible, how it would be achieved. Therefore, the relief requested would be an entanglement of the web in violation of the Federal policy. 47 U.S.C. § 230.

3. Any Detection Could Be Routed Around

As noted above, *see supra* page ?, the Internet was designed to route around obstruction; it was designed to route around damage resulting from nuclear war and permit continued transmission. It is a decentralized method of communication. Standard telephone lines use circuit-switching; a circuit is dedicated to a conversation in conventional telephony, and therefore can easily be measured and billed. With Internet telephony, each packet of data can travel over a different route to its destination. This makes measuring difficult. ACTA fails to explain to the Commission how such transmissions could be measured. An ineffective attempt to regulate this technology would merely result in the entanglement and fettering of the Internet in contravention of Federal policy as stated in section 230.

4. Any Detection Could Be Defeated by Encryption

An emerging technology of computer communication is encryption. Encrypted messages are difficult if not impossible to read unless the receiver has the proper encryption key. Transmissions intercepted in route cannot be decoded. This technology can be used with Internet telephony. Internet telephony transmissions that are encrypted will be difficult if not impossible to detect and regulate. ACTA does not explain how such a detection could be possible. Attempts to

regulate Internet telephony can be defeated by encryption. An effective attempt to regulate this technology would merely result in the entanglement and fettering of the Internet in contravention of Federal policy as stated in section 230.

B. Attempts To Regulate Internet Telephony Would Be Defeated By The Computer Network Itself

Regulation of American computer software companies would be ineffective in stopping the harm alleged by ACTA. The petition fails to account for and appreciate the global nature of the Internet and computer network communication. The software will be available for distribution on the Internet on "off-shore" sites. Individuals can go to international sites over which the Commission lacks jurisdiction, pay for their software purchase with a credit card, and download a copy of the program. The software will be as available as it was previously; the harm complained over will not have been cured by the relief requested by ACTA.

If American companies are burdened with Federal regulation, international sites will have the advantage over American companies. However ACTA proposes to achieve the relief requested (tariffs, taxes, or the unknown), this burden will have to be passed onto the consumer. American software will cost more than international software. Thus the only ones to benefit from Federal regulation would be non-American Internet telephony companies (the other solution would be the flight of American technology from the United States to foreign soil in order to sell their product free of Federal regulation).

Not only will the relief requested be defeated by "off-shore" distribution, it would be defeated by the distribution of shareware. The Internet is fertile ground for individuals to develop their

own programs and technologies. Many of these programs developed by individuals associated with no companies is freely distributed on the Internet as "freeware" or "shareware."¹⁸ Even assuming the Commission could exercise jurisdiction over American companies, it would be difficult if not impossible for the Commission to exercise jurisdiction over private individuals placing programs on the net for free distribution (furthermore, any such programmer could simply move their distribution off-shore and out of the jurisdiction of the Internet).

Thus, the relief requested would achieve only one thing; it would entangle the Internet in Federal regulation. It would not achieve its goal. It would hurt American software companies which may fall under its jurisdiction. The relief requested is the exactly the wrong-headed type of regulation, proposed by individuals unfamiliar with the medium of the Internet, that Congress clearly stated it did not want to take place. As this would relief would be in violation of section 230, it should be denied.

V. Granting the Relief Requested Would Set A Precedent Contrary to the Public Interest and Contrary to Federal Policy

ACTA's argument would set a bad precedent. It is, in essence, that because this new form of communications threatens the viability of ACTA members, it should be regulated. But Internet telephony is merely one of the many means of communication that allegedly threaten the viability of ACTA members. ACTA members carry all types of telephone transmissions (fax, data, video).

¹⁸Freeware and shareware are distributed free of charge on the Internet. It is customary for individuals who test and find the software useful to send a fee to the creator of the program. Since there is virtually no overhead and the program can be widely distributed, a small fee can generate a significant revenue for programmers.

Pursuant to ACTA's argument, every alternative means of transmitting that content should be regulated because it could have been done ACTA members services.

There are other means of communications which take away business from ACTA members. Individuals send e-mail in lieu of making long distance phone calls. Pursuant to ACTA's argument, if individuals use e-mail instead of the services of ACTA members, the e-mail software ought to be regulated. In the end, every Internet software program ought to be regulated. This precedent would entangle the web in a myriad of regulations. It would be detrimental to the Internet and the technology. It would not serve the public interest and would violate Federal policy as stated in section 230.

VI. ACTA's Disingenuous Argument That There Is a Threat to the Viability to the Internet Is Incorrect

ACTA makes the cynical argument that Internet telephony is a threat to the Internet itself. ACTA contends that the use of Internet telephony on the Internet will exhaust the bandwidth¹⁹ and cause the system to collapse. ACTA has no real concern for the Internet; ACTA merely wishes to make an phobic argument to meet its own self-serving goals. ACTA provides absolutely no evidentiary support for he proposition that Internet telephony threatens the Internet.

The growth of the Internet has been extraordinary.²⁰ The World Wide Web has accounted

¹⁹"Bandwidth" is the capacity of the line over time. For example, a bandwidth may be 5 megabytes per second. A demand to transmit more than 5 megabytes of data per second would exhaust the resources of the line causing problems, if only slow downs, for the network.

²⁰As stated above, the Internet is decentralized, scalable, and expandable. The Internet is the protocol of the Internet. Each computer that logs onto the Internet using the Internet protocol expands the size and capacity of the Internet. Each day there are more computers, more

for a significant portion of the recent growth. The attraction of the information available on the web has brought more users to the Internet using up more bandwidth. Not only are there more users, but the data transmitted is larger. Graphics sites and large files are transferred to the proliferation of users.

Many have said that this extraordinary growth must cause the Internet to collapse. It is true that there have been growing pains. There are times when the Internet is slow. But the Internet has not only survived, it has flourished. The technology of the Internet has been able to keep up with the demands of the Internet.

ACTA has presented no evidence that there is a real danger of Internet collapse nor any evidence that government regulation would be even remotely able to prevent the speculative collapse. As the Internet has been permitted to do in the past free of government regulation, it should continue to be permitted to solve the technical challenges it encounters. ACTA's professed cynical concern for the Internet does not justify granting the relief requested.

VII. ACTA Concern for Universal Service Is Unpersuasive

ACTA threatens that if ACTA members lose business, ACTA members will be less able to support universal service. First, ACTA's loss of business is entirely speculative. Second, ACTA's concern for universal service is misplaced. There are currently proceedings at the Commission to determine the future of universal service. Any argument that universal service may be harmed is premature as the nature of universal service in the new era is undetermined. One thing is certain;

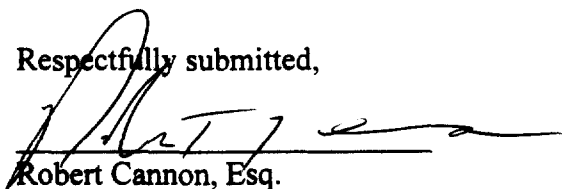
networks, and more high speed phone lines joining the Internet.

universal service has moved from the past. Arguments based on past assumptions concerning universal service are unpersuasive.

Conclusion

ACTA members are faced with more competition from new and emerging technologies. The Telecommunications Act of 1996 was passed specifically to promote competition and the promotion of new technologies. Congress believed that out of competition would come lower prices, more choices, and the emergence of new communication technologies. ACTA, fearful of competition, fearful that someone might be able to provide competitive service at a lower rate, fearful of the new choices individuals have, and fearful of being surpassed by the new technologies, would have the Commission turn the clocks back and institute a protectionist regulatory regime. Instead of embracing the future and the Internet as many phone companies have, ACTA would like to stick its head in the sand, deny the existence of the new emerging technologies, and entangle the new technologies in futile regulations in a meaningless attempt to protect ACTA's "viability." ACTA's petition should be denied.

Respectfully submitted,



Robert Cannon, Esq.

*Attorney for CPSR and the Benton
Foundation*

2358 N. Vernon Street
Arlington, VA 22205

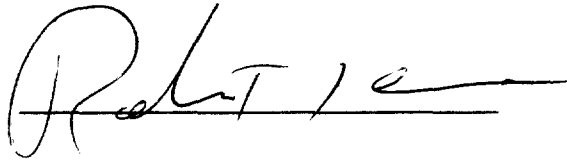
703-527-6631
cannon@cais.com
<http://www.cais.net/cannon/>

This document can be found at
[http://www.cais.net/cannon/
acta/comment.htm](http://www.cais.net/cannon/acta/comment.htm)

Dated: May 8, 1996

Certificate of Service

I hereby certify that a copy of the foregoing Joint Opposition of Computer Professionals for Social Responsibility and the Benton Foundation was served on this 2 day of May 1996, by first class mail, postage prepaid, by hand (*), or by e-mail notice to each person on the attached service list.

A handwritten signature in cursive script, appearing to read "Robert J. Lee", written over a horizontal line.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE PROVISION OF INTERSTATE AND
INTERNATIONAL INTEREXCHANGE
TELECOMMUNICATIONS SERVICE VIA
THE "INTERNET" BY NON-TARIFFED,
UNCERTIFIED ENTITIES

RM No. 8775

AMERICA'S CARRIERS
TELECOMMUNICATION
ASSOCIATION

Petition for Declaratory Ruling, Special
Relief, and Institution of Rulemaking

Notice via e-mail of Filing of the
Computer Professionals for Social Responsibility and
The Benton Foundation's Joint Opposition

Notice is hereby given that the Computer Professionals for Social Responsibility and the Benton Foundation have jointly filed this day an opposition to the America's Carriers Telecommunication Association's Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking. A copy of said opposition is available at <http://www.cais.net/cannon/acta/comment.htm>.

Robert Cannon, Esq.
*Attorney for CPSR and the Benton
Foundation*
2358 N. Vernon Street
Arlington, VA 22205
703-527-6631

cannon@cais.com
<http://www.cais.net/cannon/>

Date: May 8, 1996